

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ALL ROCK CRUSHING, INC.,

Plaintiff,

—against—

EDWARD DOYLE, JR. in his official capacity as President  
of Teamsters Local Union 456 affiliated with the  
International Brotherhood of Teamsters and Local Union  
456 affiliated with International Brotherhood of Teamsters,

Defendant.  
-----X

NOTICE OF REMOVAL

**08 CIV. 6764**

Civ. Action No.

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK:

Defendants, EDWARD DOYLE, JR. in his official capacity as President of Teamsters Local Union 456 affiliated with the International Brotherhood of Teamsters and Local Union 456 affiliated with International Brotherhood of Teamsters, by their attorneys, Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC, pursuant to 28 U.S.C. § 1441, respectfully seeks removal of this action and shows:

1. That All Rock Crushing, Inc., plaintiff herein, purported to commence a civil action in the Supreme Court of the State of New York, County of Westchester, entitled "All Rock Crushing, Inc. v. Edward Doyle, Jr. in his official capacity as President of Teamsters Local Union 456 affiliated with the International Brotherhood of Teamsters and Local Union 456 affiliated with International Brotherhood of Teamsters", by filing with the Clerk of the said Court, an Order to Show Cause (in lieu of Notice of Petition) dated July 22, 2008 and a Petition dated and verified on July 17, 2008.

2. The statutory bases of removal jurisdiction in this Court are 28 U.S.C. § 1441 and § 1331, in that the claim or right arises under the laws of the United States.

3. This is a civil action of which this Court has original jurisdiction under Section 301 of the Labor Management Relations Act ("L.M.R.A."), 29 U.S.C. § 185, and is one, therefore, which may be removed to this Court by the defendant herein pursuant to the provisions of 28 U.S.C. § 1441(a).

4. Defendant Teamsters Local Union 456 affiliated with the International Brotherhood of Teamsters (the "Union") is a party in the said action and is a labor organization within the meaning of L.M.R.A. Section 2(5), 29 U.S.C. § 152(5) with offices at 160 South Central Avenue, Elmsford, New York, County of Westchester. Defendant Edward Doyle, Jr. is a party in his capacity as President of the Union.

5. The plaintiff All Rock Crushing, Inc. is upon information and belief, a corporation duly organized and existing under the laws of New York State with its principal office located at 465 Yorktown Road, Croton-on-Hudson, New York, County of Westchester.

6. As alleged in the plaintiff's Verified Petition, plaintiff and the Union are parties to a collective bargaining agreement (the "CBA") effective from June 1, 2005 through May 31, 2008. The CBA provides for arbitration of disputes under the auspices of the American Arbitration Association ("AAA").

7. The Union has initiated arbitration proceedings at AAA under the CBA regarding "failure to abide by 'cease and desist' provisions of Arbitration Award; continued refusal to use Union's referral service and to employ Union members to perform covered work". Said "failure" and "refusal" began after issuance of the said Arbitration Award in January 2008. Plaintiff seeks

in this action to stay the arbitration on the ground that there is no applicable enforceable arbitration agreement.


8. Copies of all process and pleadings served on the defendants in connection with this action are filed herewith and attached hereto as Exhibit A.

9. The instant Notice of Removal is filed within thirty (30) days of receipt by the Union of a copy of the initial pleading setting forth the claim for relief upon which the above described action is based.

WHEREFORE, the defendants Union and Doyle pray that this action be removed to the United States District Court for the Southern District of New York.

Dated: Elmsford, New York  
July 24, 2008

BARNES, IACCARINO, VIRGINIA,  
AMBINDER & SHEPHERD, P.L.L.C.  
Attorneys for Defendant

by:   
Steven H. Kern (SK-8600)  
258 Saw Mill River Road  
Elmsford, NY 10523  
(914) 592-5740

At LAS Part 2 of the Supreme Court of the State of New York, held in and for the County of Westchester, located at 111 Dr. Martin Luther King, Jr. Blvd., White Plains, New York on the 22<sup>nd</sup> day of July, 2008

HON. MARY H. SMITH  
PRESENT: Hon. SUPREME COURT JUSTICE, Justice

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

ALL ROCK CRUSHING, INC.

Petitioner,

-v-

EDWARD DOYLE, JR. in his official capacity as President of Teamsters Local Union 456 affiliated with the International Brotherhood of Teamsters and Local Union 456 affiliated with International Brotherhood of Teamsters,

Respondents.

Index No. 15883/08

ORDER TO SHOW CAUSE IN  
LIEU OF NOTICE OF PETITION  
TO STAY ARBITRATION

RECEIVED

JUL 18 2008

CHIEF CLERK  
WESTCHESTER SUPREME  
AND COUNTY COURTS

SIRS:

Upon the annexed Petition of All Rock Crushing, Inc., and all supporting papers and exhibits

LET Respondents Edward Doyle Jr. in his official capacity as President of Teamsters

Local Union 456 affiliated with the International Brotherhood of Teamsters and Local Union 456 affiliated with International Brotherhood of Teamsters show cause at LAS Part 2 of this <sup>before the undersigned</sup>

Court to be held at the Courthouse thereof, located at 111 Dr. Martin Luther King Jr. Blvd, Room 1202 on the 15<sup>th</sup> day of August 2008 at 9:30 a.m. in the forenoon of that day or as soon <sup>as personal appearance</sup> thereafter as counsel can be heard, why an Order should not be entered pursuant to CPLR

7503(c),

(a) Enjoining, prohibiting and restraining Respondents from attempting to proceed with

the arbitration listed in Respondents Notice of Intention to Arbitrate dated June 27, 2008;

- (b) Permanently enjoining, prohibiting or barring the arbitration demanded against the Petitioner by Respondents on the ground that a valid, current or enforceable agreement does not exist between the parties;
- (c) awarding Petitioner attorneys fees, disbursements and costs of suit;
- (d) and awarding Petitioner such other further relief as the Court deems just and proper.

IT IS FURTHER ORDERED that answering affidavits, if any, are required to be served upon counsel for Petitioner at least seven (7) days before the return date of this proceeding and reply papers, if any, shall be served at least two (2) days before the return date of this proceeding.

SUFFICIENT REASON APPEARING, let service of a copy of this Order together with the papers upon which it was granted, <sup>personal</sup> ~~upon counsel of record for Respondents in the within~~ <sup>petition and</sup> ~~action, Steven Kern, Esq., Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC, 258 Saw Mill River Road, Elmsford, NY 10523 via~~

on or before the 25<sup>th</sup> day of July 2008 be deemed sufficient service. *Proof of*

Dated: July 17, 2008

White Plains, New York

*said service shall be submitted to Chambers prior to the return date.*

ENTER:

*[Signature]*  
HON. MARY H. SMITH  
SUPREME COURT JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
ALL ROCK CRUSHING, INC.,

Petitioner,

Index No.

—against—

**VERIFIED PETITION TO STAY  
ARBITRATION PURSUANT TO  
CPLR §7503(b)**

EDWARD DOYLE, JR. in his official capacity as  
President of Teamsters Local Union 456 affiliated with  
the International Brotherhood of Teamsters and Local  
Union 456 affiliated with International Brotherhood of  
Teamsters,

Respondents.  
-----X

The Verified Petition of Petitioner, All Rock Crushing, Inc. , respectfully alleges as  
follows:

1. Petitioner All Rock Crushing, Inc. ("Petitioner" or "All Rock") is a domestic corporation duly authorized to conduct business in the State of New York.
2. Respondent Edward Doyle, Jr. is President of Teamsters Local Union No. 456 affiliated with the International Brotherhood of Teamsters ("Respondent President") and maintains his principal place of business at 160 South Central Avenue, Elmsford, NY 10523, Westchester County, New York.
3. Respondent Teamsters Local Union No. 456 affiliated with the International Brotherhood of Teamsters ("Respondent Union") is a labor organization of employees employed in the construction services industry with its principal place of business at 160 South Central Avenue, Elmsford, NY 10523, Westchester County, New York.
4. Petitioner and Respondent Union were parties to a collective bargaining agreement that was in effect from June 1, 2005 through May 31, 2008.

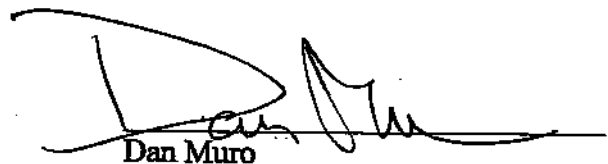
5. On or about March 13, 2008 and in accordance with Article XXXVI of the collective bargaining agreement, Petitioner duly notified Respondent Union of its termination of the collective bargaining agreement via facsimile and first class mail. Copies of the correspondence and proof of service are annexed hereto collectively as Exhibit A.
6. As additional insurance, Petitioner's counsel served a second notice of termination on March 30, 2008 via facsimile and federal express overnight mail. Copies of the correspondence and proof of service are annexed hereto as Exhibit B.
7. Thus, Respondent Union was duly notified that Petitioner terminated the collective bargaining agreement.
8. Accordingly, there exists no valid, current or enforceable agreement between the parties. Petitioner served its termination notice within the time prescribed in the collective bargaining agreement and, as such, the parties are no longer contractually bound.
9. It is well established that arbitration is a matter of contract and a party cannot be required to submit to arbitration in the absence of an explicit agreement. See Matarasso vs. Continental Casualty Co., 56 N.Y.2d 264, 451 N.Y.S. 2d 703(1982).
10. In view of the fact that Petitioner terminated the collective bargaining agreement in advance of the expiration date thereby severing the relationship between the parties, there exists no valid, current or binding agreement between Petitioner and Respondent Union requiring arbitration of any issue.
11. Notwithstanding the proper and timely termination of the collective bargaining agreement between Petitioner and Respondent Union, by letter dated June 27, 2008, Respondent Union caused a Notice of Intention to Arbitrate to be served

VERIFICATION

STATE OF NEW YORK                    )  
  ss:  
COUNTY OF WESTCHESTER        )

DAN MURO, being duly sworn, deposes and says:

I am an authorized representative of All Rock Crushing, Inc, Petitioner in the within action. I have read the foregoing Notice of Petition to Stay Arbitration and Verified Petition to Stay Arbitration Pursuant to CPLR 7503(c) and know the contents thereof, and that the same is true to my own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

  
Dan Muro

Sworn to before me this 17  
day of July 2008.

  
Notary Public

Notary # 02K06175746  
Expires 10/15/11



**Exhibit A**

## TRANSMISSION VERIFICATION REPORT

TIME : 03/13/2008 17:19  
NAME : HQ GLOBAL  
FAX : 9146827784  
TEL : 9146827784  
SER.# : BR0A5J206023

DATE, TIME  
FAX NO./NAME  
DURATION  
PAGE(S)  
RESULT  
MODE

03/13 17:18  
16119495924266  
00:00:19  
02  
OK  
STANDARD  
ECM

**Fax Transmittal Form**

To: Teamsters Local 456.....From: All Rock Crushing, Inc.  
Date: March 13, 2008 Number of Pages: 2  
Fax Number: (914) 592-4266

**Message:**

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL AS SOON AS POSSIBLE.

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, THE READER IS HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE DESTROY IT AND NOTIFY ME IMMEDIATELY BY TELEPHONE AT THE NUMBER INDICATED ABOVE. THANK YOU.

March 13, 2008

VIA FACSIMILE AND FIRST CLASS MAIL  
(914) 592-4266  
Teamsters Local Union No. 456  
160 South Central Avenue  
Elmsford, New York 10523

Re: Termination of Collective Bargaining Agreement

Dear Sir or Madam:

I write in accordance with the terms of the Heavy Construction Agreement between Teamsters Local 456 and All Rock Crushing, Inc. to inform you that All Rock Crushing, Inc. hereby withdraws and terminates the collective bargaining agreement effective on the date of termination May 31, 2008.

All Rock Crushing, Inc. does not intend to renew the collective bargaining agreement with the Teamsters.

Thank you.

Very truly yours,  
All Rock Crushing, Inc.

  
By: Daniel Muro

**Exhibit B**

6/2/08

ALL ROCK CRUSHING, INC.  
1000 ROUTE 92  
ROCKY HILL, CT 06067

ALL ROCK CRUSHING, INC.  
1000 ROUTE 92  
ROCKY HILL, CT 06067  
TEL: 860-399-1234  
FAX: 860-399-1235  
WWW.ARRK.COM

March 30, 2008

VIA FACSIMILE AND FEDERAL EXPRESS  
(914) 592-4266  
Teamsters Local Union No. 456  
160 South Central Avenue  
Elmsford, New York 10523

Re: All Rock Crushing, Inc.

Dear Sir or Madam:

The enclosed was served upon you via fax and first class mail on March 13, 2008.

Thank you.

Sincerely,



George S. Kokkalenios, Esq.

Encl.

March 13, 2008

VIA FACSIMILE AND FIRST CLASS MAIL  
(914) 592-4266  
Teamsters Local Union No. 456  
160 South Central Avenue  
Elmsford, New York 10523

Re: Termination of Collective Bargaining Agreement

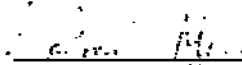
Dear Sir or Madam:

I write in accordance with the terms of the Heavy Construction Agreement between Teamsters Local 456 and All Rock Crushing, Inc. to inform you that All Rock Crushing, Inc. hereby withdraws and terminates the collective bargaining agreement effective on the date of termination May 31, 2008.

All Rock Crushing, Inc. does not intend to renew the collective bargaining agreement with the Teamsters.

Thank you.

Very truly yours,  
All Rock Crushing, Inc.

  
By: Daniel Muro

TRANSMISSION VERIFICATION REPORT

TIME : 03/29/2008 22:25  
NAME : FEDEV KINKOS  
FAX : 9146846137  
TEL : 9146842679  
SER. # : 000A7J796894

DATE, TIME	03/29 22:24
FAX NO./NAME	5924266
DURATION	00:00:41
PAGE(S)	03
RESULT	OK
MODE	STANDARD
	ECM







FedEx Express  
Customer Support Trace  
3875 Airways Boulevard  
Module H, 4th Floor  
Memphis, TN 38116

U.S. Mail: PO Box 727  
Memphis, TN 38194-4643

Telephone: 901-368-3800

July 17, 2008

Dear Customer:

The following is the proof-of-delivery for tracking number 864524541854.

---

**Delivery Information:**

Status:	Delivered	Delivery date:	Apr 1, 2008 12:07
Signed for by:	S.WALLACE		
Service type:	Standard Overnight		

---

**Shipping Information:**

Tracking number:	864524541854	Ship date:	Mar 31, 2008
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Recipient:  
ELMSFORD, NY US

Shipper:  
WHITE PLAINS, NY US

Reference

ALL-ROCK

Thank you for choosing FedEx Express.

FedEx Worldwide Customer Service  
1.800.GoFedEx 1.800.463.3339

3 Surrey Lane  
Hempstead, New York 11550  
(516) 483-2990  
Fax: (516) 483-0556

258 Saw Mill River Road  
Elmsford, New York 10523  
(914) 592-5740  
Fax: (914) 592-3213

111 Broadway  
Trinity Centre  
Suite 1403  
New York, New York 10006  
(212) 943-9080  
Fax: (212) 943-9082

June 27, 2008

Lauren Wilson, Director  
American Arbitration Association  
1633 Broadway / 10<sup>th</sup> floor  
New York, NY 10019

Re: Local 456, IBT – All Rock Crushing, Inc.

Dear Ms. Wilson:

This firm is counsel to Local 456, IBT. The Union is party to a collective bargaining agreement with All Rock Crushing, Inc. A dispute has arisen between the parties concerning the following issue which the Union desires to arbitrate:

**Failure to abide by "cease and desist" provisions of Arbitration Award;  
Continued refusal to use Union's referral service and  
to employ Union members to perform covered work**

The Union requests that a panel of arbitrators be provided for the parties' selection. I have enclosed a copy of the Notice of Intention to Arbitrate. This Notice was served upon the employer on June 27, 2008. The Union requests that the arbitration hearing be held in Westchester County.

**Employer:** Dan Muro  
All Rock Crushing, Inc.  
465 Yorktown Road  
Croton-on-Hudson, NY 10520  
914-827-3279  
fax: 914-271-8393

**Counsel:** George Kokkalenios, Esq.  
50 Main Street / Suite 1000  
White Plains, NY 10606  
914-682-6884  
fax: 914-821-9014

Yours truly,



Steven H. Kern, Esq.

SHK/id  
enc.

cc: Local 456, IBT  
Dan Muro, All Rock Crushing, Inc.  
George Kokkalenios, Esq.  
F:\LEGAL\456\All Rock Crushing\Arb2\File AAA.doc

ATTORNEYS AT LAW

3 Surrey Lane  
Hempstead, New York 11550  
(516) 483-2990  
Fax: (516) 483-0566

258 Saw Mill River Road  
Elmsford, New York 10523  
(914) 592-5740  
Fax: (914) 592-3213

111 Broadway  
Trinity Centre  
Suite 1403  
New York, New York 10006  
(212) 943-9080  
Fax: (212) 943-9082

June 27, 2008

*Via Certified & Regular Mail*

Dan Muro  
All Rock Crushing, Inc.  
465 Yorktown Road  
Croton-on-Hudson, NY 10520

Re: Failure to comply with Arbitration Award  
and utilize Local 456 referral hall

Dear Mr. Muro:

Enclosed please find Notice of Intention to Arbitrate regarding the above grievances. Please advise if the Employer wants to discuss these matters before arbitration and/or if you want the grievances heard by a Joint Committee as provided for by Article XXXI of the collective bargaining agreement.

Please do not hesitate to contact me if there are any questions.

Yours truly,



Steven H. Kern, Esq.

SHK/id  
enc.

cc: George Kokkalenios, Esq.  
Local 456, IBT  
F:\LEGAL\MS6\All Rock Crushing\Arb201.doc

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration Between  
LOCAL 456, INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS,

—and—

ALL ROCK CRUSHING, INC.,

Employer.

NOTICE OF  
INTENTION TO  
ARBITRATE

S I R S :

PLEASE TAKE NOTICE, under CPLR 7503(c), that the undersigned intends, pursuant to the provisions of a written agreement between Local 456 and ALL ROCK CRUSHING, INC., to conduct an arbitration with respect to the following controversy:

**Failure to abide by "cease and desist" provisions of Arbitration Award;  
Continued refusal to use Union's referral service and  
to employ Union members to perform covered work**

That arbitration will be conducted in the City of New York before an Arbitrator designated in accordance with the rules of the American Arbitration Association at the offices of the said Association located at 1633 Broadway – 10<sup>th</sup> floor, New York, New York.

PLEASE TAKE FURTHER NOTICE, that unless within twenty days after the service of this notice, you apply, pursuant to CPLR 7503(c), for a stay of the arbitration, you will thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time.

Dated: June 26, 2008

Local 456, International Brotherhood of Teamsters

by: 

Steven H. Kern, attorney

BARNES, IACCARINO, VIRGINIA, AMBINDER  
& SHEPHERD, PLLC  
258 Saw Mill River Road  
Elmsford, NY 10523  
(914) 592-5740

To: Dan Muro  
All Rock Crushing, Inc.  
465 Yorktown Road  
Croton-on-Hudson, NY 10520

cc: George Kokkalanis, Esq.